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## Policy Forum: Promoting Tax Compliance by Regulating the Digital Economy—Quebec’s Uber Initiative

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### PRÉCIS

La numérisation de l'économie change la façon dont les entreprises interagissent avec leurs clients et fournisseurs. Elle facilite les transactions entre particuliers et simplifie la conduite des affaires à l'étranger, sans nécessiter de présence physique. Cette tendance lourde entraîne aussi de nombreux défis pour les administrations fiscales qui se voient confrontées à de nouvelles pratiques d'affaires qui remettent en question les façons traditionnelles de prélever les recettes fiscales, les forçant à innover. Au Québec, le contexte entourant la légalisation des activités de la multinationale Uber a mené celle-ci à accomplir, pour le compte des chauffeurs utilisant sa plateforme, des activités de conformité fiscale échouant normalement aux employeurs. L'implication de la multinationale Uber qui verse directement à Revenu Québec la taxe de vente applicable sur les transactions des chauffeurs favorise la protection des recettes fiscales, notamment celles des taxes à la consommation dans un secteur économique à prévalence d'évasion fiscale.

### ABSTRACT

The development and expansion of the digital economy is changing how companies interact with their customers and suppliers. Digital business models facilitate transactions between individuals and make it easier to conduct business abroad without the need for a physical presence. However, the growing use of such models creates many challenges for tax administrations. In particular, these new business practices call into question the traditional ways of collecting tax revenues, and thus force tax administrations to innovate. In Quebec, the context surrounding the legalization of the operations of the multinational Uber has led to an agreement between the company

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and the provincial government providing that Uber will carry out, on behalf of the drivers using its platform, tax compliance activities that employers would normally perform. Specifically, Uber now pays the sales tax applicable to drivers' transactions directly to Revenu Québec. This arrangement helps to protect commodity tax revenues in an economic sector where tax evasion is prevalent.

**KEYWORDS:** GST ■ GIG WORKERS ■ QST ■ QUEBEC ■ TAX-COLLECTION AGREEMENTS ■ TAX EVASION

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## INTRODUCTION

Faced with business practices in the digital economy that use alternative means to sell goods and services, the institutions that are responsible for maintaining the integrity of our tax systems have two choices: they can opt for keeping the status quo, with the risk that the legislative framework may no longer be fully in line with business realities, owing to the occasional requirement to deal with inconsistencies; or they can be proactive, adapting to changing realities (at the risk of upsetting part of the population) in an attempt to resolve new tax issues and maintain a tax framework that is consistent in its application to taxpayers.

To this end, since January 1, 2019, in accordance with the recommendations of the Organisation for Economic Co-operation and Development (OECD), Quebec requires foreign companies that do not have a place of business in the province, and make supplies of incorporeal property and services, to collect the Quebec sales tax (QST).<sup>1</sup> The same requirement has applied since September 1, 2019, to Canadian suppliers of property (corporeal and incorporeal) and services located outside Quebec. As of January 4, 2021, 806 suppliers outside Quebec were registered for

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1 Act Respecting the Québec Sales Tax, CQLR c. T-0.1, c. VIII.1 (herein referred to as “the AQST”). Under an agreement between the federal and Quebec governments, Revenu Québec (RQ) administers the goods and services tax (GST) and the harmonized sales tax (HST) in accordance with the rules set by the federal government. In this specific case, the Canadian government asked the city of Quebec not to collect the GST.

QST purposes,<sup>2</sup> with taxes collected amounting to nearly \$120 million for the 2019-2020 fiscal year.<sup>3</sup>

The government of Canada initially refused to follow suit (in the first mandate of the Liberal government, from 2015 to 2019), claiming that a new tax on intangible personal property and services would increase the tax burden on Canadians. However, it recently announced that it will apply the goods and services tax (GST) and harmonized sales tax (HST) on electronic supplies to consumers starting in July 2021.<sup>4</sup>

In addition to the question of the place of business, special tax issues are associated with new technologies that allow individuals to exchange goods and services by selling or renting via a digital platform.

Digital platforms drive growth in the number of vendors and service providers that can qualify as small suppliers,<sup>5</sup> which do not have to register for GST/HST and QST purposes, or to collect these taxes, as most traditional suppliers do. Eventually, this could result in a loss of tax revenue.

In addition, a lack of knowledge of tax legislation by individuals participating in the sharing economy, the anonymity surrounding these transactions, and the involvement of foreign companies as online intermediaries create opportunities for underreporting income and promote tax evasion.<sup>6</sup>

In high tax burden environments, such as that in Quebec, taxpayers who evade their tax obligations enjoy a significant advantage over competitors who are obliged to follow the rules. Consequently, to preserve the province's tax base and maintain fairness, Quebec's minister of finance proactively entered into agreements with two sharing economy platforms based outside Canada. As a result of one of these agreements, Uber has been collecting sales taxes (GST and QST) related to the activities of its Quebec partner drivers (Uber drivers) since September 2016.<sup>7</sup> This

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2 Revenu Québec, "Suppliers Outside Québec That Are Registered for the QST" ([www.revenuquebec.ca/en/businesses/consumption-taxes/gsthst-and-qst/special-cases-gsthst-and-qst/suppliers-outside-quebec/suppliers-outside-quebec-that-are-registered-for-the-qst](http://www.revenuquebec.ca/en/businesses/consumption-taxes/gsthst-and-qst/special-cases-gsthst-and-qst/suppliers-outside-quebec/suppliers-outside-quebec-that-are-registered-for-the-qst)).

3 Quebec, Finances Québec, 2020-2021 Budget, Additional information, March 2020, at B.4.

4 Canada, Department of Finance, *Fall Economic Statement 2020—Supporting Canadians and Fighting COVID-19*, November 30, 2020, at 223.

5 See the definition of "small supplier" in subsection 148(1) of the Excise Tax Act, RSC 1985, c. E-15 (herein referred to as "the ETA").

6 Revenu Québec, "La lutte contre l'évasion fiscale [Fighting tax evasion]," PowerPoint presentation to Université de Sherbrooke master of taxation students, Quebec, February 2020, at 65.

7 An agreement was also entered into with Airbnb in July 2017 for the collection of tax on short-term lodging. See Revenu Québec, "Entente de conformité fiscale relative à la taxes sur l'hébergement à l'égard des hôtes utilisant la plateforme 'AIRBNB' [Tax on Lodging Compliance Agreement for Hosts Using the Airbnb Platform]" ([www.revenuquebec.ca/documents/entente-airbnb.PDF](http://www.revenuquebec.ca/documents/entente-airbnb.PDF)). Canada will apply GST/HST on rentals of short-term accommodation provided through a platform beginning in July 2021. See *Fall Economic Statement 2020*, supra note 4, at 231.

agreement,<sup>8</sup> which won the prestigious *Financial Times* award in the “innovation in collaboration” category,<sup>9</sup> came almost a year before Canada amended the definition of “taxi business” under the Excise Tax Act to include passenger transportation organized or coordinated using a platform.<sup>10</sup>

The first part of this article details certain tax innovations provided for in the tax compliance agreement entered into between Quebec and Uber, and clarifies the environment in which the agreement was implemented. The second part assesses the extent to which the initiative has effectively contributed to preserving the tax base and maintaining tax fairness in Quebec. In this respect, Quebec’s initiative could inspire the rest of Canada, and a few thoughts on this subject are presented in a brief concluding section.

## THE PLATFORM ECONOMY, THE TAXI INDUSTRY, AND TAXATION

The arrival of Uber in Quebec’s major urban centres<sup>11</sup> in late 2013 has profoundly changed taxi services, shaking up a provincially regulated supply management

8 Entente relative aux exigences de conformité fiscale au Québec à l’égard des chauffeurs utilisant les plateformes « uberX », « uberXL » ou « uberSELECT » [Agreement Regarding Tax Compliance Requirements in Quebec for Drivers Using the “uberX,” “uberXL” or “uberSELECT” Platforms], signed in 2016 (<http://cffp.recherche.usherbrooke.ca/wp-content/uploads/2021/01/entente-uber-MFQ-projetpilote.pdf>), retrieved from the RQ website in the fall of 2020. A similar agreement was also entered into in 2019 with Coopérative de solidarité Eva, another sharing economy business in the remunerated passenger transportation services sector. It should be noted that Uber plans to transfer part of its activities to Canada as of July 1, 2021. In such a case, Uber would then have the additional obligation to collect sales taxes on taxable supplies made with drivers. See Tara Deschamps, “Uber Canada’s Ride-Hailing, Food-Delivery Businesses To Shift from Being Based in Netherlands,” *The Globe and Mail*, June 24, 2021.

9 Joshua Oliver, “Thinking Outside the Box Gives Taxman Easy Ride from Cab Drivers,” in *FT North America Innovative Lawyers 2018* (London, UK: Financial Times, December 2018), 36-37.

10 Subsection 240(1.1) of the ETA provides that a person carrying on a taxi business is required to register for the GST regardless of the person’s sales. However, prior to July 1, 2017, the definition of “taxi business” did not explicitly include passenger transportation through fares organized or coordinated using an electronic platform or system, leaving it open to interpretation as to whether Uber drivers may qualify as small suppliers. See Ian Caines and Zvi Halpern-Shavim, “Income and Commodity Tax Considerations for the Sharing Economy,” in *Report of Proceedings of the Sixty-Eighth Tax Conference*, 2016 Conference Report (Toronto: Canadian Tax Foundation, 2017), 35:1-26. The definition of “taxi business” in section 1 of the AQST has been harmonized with the revised federal definition. However, neither the federal nor the Quebec legislation provides for the collection and remittance of sales taxes by Uber on behalf of drivers, or for information on the drivers’ activities to be transmitted to the relevant tax authority. In Quebec, these matters are addressed instead by the tax compliance agreement discussed in this article.

11 Uber is not present throughout Quebec but instead focuses on the greater Montreal, Quebec City, and Gatineau areas.

model.<sup>12</sup> In the past, a permit system for the provision of remunerated passenger transportation services provided access to work, while a rate system governed the amounts charged to clients. It stands to reason that the entry of a new player that operated by a radically different service model would be met with fierce opposition from the traditional taxi industry.

### Conflict Between Uber and Revenu Québec

Uber does not operate in the same manner as the traditional taxi industry. The multinational connects customers with unlicensed drivers or taxi owners, and electronic payment is required for transactions, whereas cash payment was, until recently, the industry's preferred method of payment. Uber, which acts in particular as a dispatcher, determines the fare of a trip based on supply and demand, and charges its drivers a service fee (calculated as a percentage of the rate charged to the customer) for the use of its platform.<sup>13</sup>

Initially, Uber drivers operated illegally. In addition to the unlicensed taxi service, non-collection of sales taxes quickly became an issue. In May 2015, Revenu Québec (RQ) searched the offices of Uber Canada Inc. in Montreal, alleging that it "assists drivers using the Uber app to evade compliance with tax legislation, including the required payment, remittance or instalments of GST and QST."<sup>14</sup> It must be understood that, theoretically, the non-collection of sales taxes gave Uber drivers a competitive edge over the traditional taxi industry, enabling them to offer customers savings of nearly 15 percent on their trips.<sup>15</sup>

Uber filed a court challenge of the search warrant obtained by RQ and attempted to argue that the transportation services provided through its platform were not taxi services, since the price of the service offered by Uber drivers was not regulated, and that consequently, Uber drivers could avail themselves of the small supplier provision.<sup>16</sup>

12 In contrast to Quebec's approach, in a number of Canadian provinces the regulation of taxi services has been devolved to the municipal level. See Urwana Coiquaud and Lucie Morissette, "La déréglementation du secteur des taxis au Québec : Une négociation entre l'État et Uber [Deregulation of the Québec Taxi Industry: A Negotiation Between the Government and Uber]," in *Chronique internationale de l'IRES*, no. 168 (Noisy-le-Grand, France: Institut de Recherches Économiques et Sociales, 2019), 101-9.

13 Quebec, Ministère des Transports, de la Mobilité durable et de l'Électrification des transports, *Document d'information sur le transport rémunéré de personnes par automobiles* [Information Document Regarding Passenger Transportation by Automobile] (Quebec: Ministère des Transports, de la Mobilité durable et de l'Électrification des transports, 2016), at 3 ([www.transports.gouv.qc.ca/fr/ministere/acces-information-renseignements-personnels/documents-reglement-diffusion/demande-acces/Documents/2016/05/lai-2016-2017-018-document-information-transport.pdf](http://www.transports.gouv.qc.ca/fr/ministere/acces-information-renseignements-personnels/documents-reglement-diffusion/demande-acces/Documents/2016/05/lai-2016-2017-018-document-information-transport.pdf)).

14 *Uber Canada inc. c. Agence du revenu du Québec*, 2016 QCCS 2158, at paragraph 51 (our translation).

15 *Ibid.*, at paragraph 221.

16 Ian Caines and Zvi Halpern-Shavim, "Taxis, Taxes, and the Complexity of Compliance in the Sharing Economy" (2017) 7:1 *Canadian Tax Focus* 2-3.

In May 2016, the trial court ruled that the search warrant was not to be quashed. The judge determined that sales taxes were to be collected, finding that

UberX drivers cannot be considered small suppliers who are not required to register for the purposes of collecting and remitting taxes by considering that they are not carrying on a taxi business, as they are in violation of the Act by not holding a taxi licence.<sup>17</sup>

The judge also found that Uber did indeed help the drivers to evade their tax obligations. This decision was confirmed by the Quebec Superior Court in August 2016.<sup>18</sup>

### Pilot Project

In September 2016, a pilot project was entered into between the minister of transport of Quebec (MTQ) and Uber Canada Inc. to allow Uber and its drivers to operate legally in Quebec.<sup>19</sup> However, the agreement was conditional on “compliance with government tax requirements.”<sup>20</sup>

To this effect, a complementary agreement was reached between the minister of finance of Quebec (MFQ) and Uber Canada Inc./Rasier Operations BV (“the MFQ-Uber agreement”).<sup>21</sup> This agreement remedied the non-compliance attributed to Uber drivers by RQ in the collection and remittance of sales taxes that were documented in the trial concluded just a few weeks earlier. The court decisions in favour of the Quebec government, combined with the social pressure that Uber would have been under if it had continued to operate illegally in the absence of an agreement, is thought to have given Quebec an enviable negotiating position.

### Change from the Previous Circumstances

The MFQ-Uber agreement clarifies the tax requirements to be met by the digital platform and confirms that the activities of Uber drivers constitute taxi businesses.<sup>22</sup> It stipulates that drivers are required to

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17 *Uber Canada*, supra note 14, at paragraph 206 (our translation).

18 *Uber Canada inc. c. Agence du revenu du Québec*, 2016 QCCA 1303, at paragraph 64; leave to appeal to the Supreme Court of Canada dismissed February 23, 2017.

19 Entente ministre des Transports, de la Mobilité durable et de l'Électrification des transports and Uber Canada Inc. [Agreement Between the Minister of Transport, Sustainable Mobility and Transport Electrification and Uber Canada Inc.], signed September 9, 2016 ([www.transports.gouv.qc.ca/fr/salle-de-presse/nouvelles/Documents/2016-09-09/entente-uber.pdf](http://www.transports.gouv.qc.ca/fr/salle-de-presse/nouvelles/Documents/2016-09-09/entente-uber.pdf)).

20 *Ibid.*, section 2.8 (our translation).

21 *Supra* note 8.

22 Section 2 of Bill 100, Act To Amend Various Legislative Provisions Respecting Mainly Transportation Services by Taxi (enacted by SQ 2016, c. 22; royal assent June 10, 2016)

- register for GST and QST purposes in order to use the platform and
- authorize the subsidiary Rasier Operations BV<sup>23</sup> (with which the drivers transact to access the Uber platform) to remit to RQ, for and on behalf of the drivers, as an instalment payment, the amounts determined on the basis of the net tax calculated using the quick method of accounting in respect of their taxi transportation services.

In addition, Rasier Operations BV is required to

- make available to RQ the names and addresses of drivers, their social insurance numbers, their GST and QST registration numbers, the number of paid kilometres travelled, the number of taxi services provided, the amounts of supplies, and the taxes collected;
- make available to drivers the information necessary to allow them to file their annual GST and QST and income tax returns—specifically, amounts collected (including taxes), applicable GST and QST amounts, total amounts to be remitted under the quick method of accounting, amounts paid by Rasier Operations BV to RQ for each driver as instalment payments, and net amounts paid to drivers; and
- indicate on the receipt given to the client the amounts of GST and QST and the driver's registration numbers.

In some respects, Uber is required to perform activities normally performed by employers (withholding and transmitting tax information). The customized requirements in the agreement facilitate the collection of sales tax revenues and validation of tax compliance for RQ<sup>24</sup> and reduce the administrative burden for Uber drivers.<sup>25</sup>

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defines “taxi transportation services” to include, unless an exception is made, any paid passenger transportation service by automobile.

- 23 Rasier Operations BV is a non-resident corporation that holds a licence to use Uber technology services granted by Uber BV. It is not subject to Canadian tax. See Marwah Rizqy, “Impact de l'économie numérique de partage sur la fiscalité de la province de Québec et de ses municipalités [Impact of the Digital Sharing Economy on the Taxation of the Province of Quebec and Its Municipalities],” in *Revue française de finance publique*, no. 135 (Paris: Librairie Générale de Droit et de Jurisprudence, 2016), 193-204, at 193. However, by transferring the Canadian activities of Rasier Operations BV to Canada (see *supra* note 8), the profit generated thereon would be subject to Canadian corporate income tax.
- 24 Although no withholding tax is required from the platform with respect to personal income tax, the MFQ-Uber agreement provides RQ with information on Uber drivers' taxi businesses. This information enhances compliance by facilitating audit activities.
- 25 Nicholas X. Cloutier, “Taxation of the Sharing Economy and the Digital Economy,” presented at the Canadian Tax Foundation's 2019 Corporate Management Tax Conference and live webcast, Toronto, February 27-28, 2019, PowerPoint presentation, at 19.

On October 19, 2019, the Act Respecting Remunerated Passenger Transportation by Automobile<sup>26</sup> was adopted, perpetuating the obligation for a platform to enter into an agreement to comply with government tax requirements and ending the pilot project.

### Innovations and Simplifications for Uber Drivers

To encourage voluntary compliance by taxpayers with their tax obligations, RQ has adopted the goal of simplifying the tax-filing process.<sup>27</sup> The MFQ-Uber agreement is in line with this objective in acknowledging, on the one hand, that the taxi activities of some Uber drivers are limited, allowing them to generate only supplementary income,<sup>28</sup> and, on the other hand, that some Uber drivers may not realize that the platform considers them to be self-employed workers and not employees, thereby affecting their tax obligations.

The tax compliance required of traditional taxi businesses may include remitting quarterly GST and QST instalment payments and maintaining records (of the number of commercial and total vehicle kilometres travelled). Meeting these requirements can be particularly burdensome for those Uber drivers who carry on a low level of taxi activities. Under the MFQ-Uber agreement, tax compliance for Uber drivers is simplified. However, as described below, the obligation of Rasier Operations BV to collect and remit sales taxes involves “directing” certain elections normally left to the discretion of the taxpayer.

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26 Bill 17, Act Respecting Remunerated Passenger Transportation by Automobile, SQ 2019, c. 18; royal assent October 10, 2019. Section 37 of the legislation states, “When the fare of a trip made as part of the transportation system is collected electronically, on behalf of the drivers registered with the system operator, by the operator or a supplier whose services the operator retains, the operator or, if applicable, the supplier must enter into an agreement with the Minister of Finance to ensure compliance with government requirements regarding taxation. The Minister of Revenue may, on such conditions the Minister determines, exempt an operator or supplier or a class of operators or suppliers from the requirement set out in the first paragraph. The Minister may, however, cancel the exemption or modify the conditions.” More specifically, the MFQ-Uber agreement was extended to December 31, 2020 following the end of the pilot project, and at the time of writing, discussions were taking place between the MFQ and Uber. See Quebec, Ministère des Transports, “Transport rémunéré de personnes par automobile — Dispositions transitoires [Remunerated Passenger Transportation by Automobile—Transitional Provisions]” ([www.transports.gouv.qc.ca/fr/entreprises-partenaires/trpa/Documents/trpa/TRPA-dispositions-transitoires.pdf](http://www.transports.gouv.qc.ca/fr/entreprises-partenaires/trpa/Documents/trpa/TRPA-dispositions-transitoires.pdf)).

27 Quebec, Finances Québec, 2013-2014 Budget, November 20, 2012, at F.8.

28 Quebec, Ministère des Transports, *Analyse d'impact réglementaire — Projet de règlement sur le transport rémunéré de personnes par automobile* [Regulatory Impact Analysis—Draft Regulation Respecting Remunerated Passenger Transportation] (Quebec: Ministère des Transports, 2020), at 8. RQ considers that the weekly activity of Uber drivers ranges from a few hours a month to more than 60 hours a week. Nearly 1,000 of the 15,000 taxi drivers operating in Quebec simultaneously use the Uber platform.



- *Use of the quick method of accounting.*<sup>29</sup> This method is used to calculate the amounts to be remitted to RQ by Rasier Operations BV. In practice, taxes are normally collected from customers, but the amount to be remitted to RQ is reduced (as shown in table 1) to take into account a deemed amount of input tax credits (ITCs) and input tax refunds (ITRs).<sup>30</sup>
- *Use of a GST and QST fiscal year ending December 31 and annual filing frequency, with GST and QST returns to be filed online.*<sup>31</sup> The alignment of the annual filing frequency for the information made available to Uber drivers with the annual filing frequency for income tax and GST and QST returns simplifies the reporting mechanism, allowing Uber drivers who carry on no other commercial activities, or who use no other platforms, to directly report the information received, and reducing the need for tax specialists. In addition, with information being submitted electronically by drivers, RQ can more readily compare such information against that submitted by Rasier Operations BV.

Given that a portion of non-compliance results from taxpayers' unawareness of the rules and/or their inability to meet tax obligations, rather than deliberate evasion tactics, the simplification and reduced cost of compliance are fairly significant.<sup>32</sup>

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- 29 In practice, Uber drivers may elect not to use the quick method, particularly if they carry on other commercial activities. However, the calculation of the amounts paid by Uber to RQ is in all cases made at the rates set out in the MFQ-Uber agreement. As a result, drivers who do not elect to use the quick method of accounting are required to make the necessary adjustments when filing their returns.
- 30 In addition to the deemed ITCs and ITRs, drivers can claim ITCs and ITRs for property used primarily in the course of commercial activities.
- 31 The MFQ-Uber agreement provides that drivers who carry on other commercial activities may retain their fiscal year and reporting frequency, and carry out their compliance activities in their usual manner. See Revenu Québec, "Drivers Related to a Transportation System Operator Under Agreement Who Do Not Carry on Other Commercial Activities" ([www.revenuquebec.ca/en/businesses/consumption-taxes/gsthst-and-qst/special-cases-gsthst-and-qst/drivers-related-to-a-transportation-system-operator-under-agreement/drivers-who-do-not-carry-on-other-commercial-activities](http://www.revenuquebec.ca/en/businesses/consumption-taxes/gsthst-and-qst/special-cases-gsthst-and-qst/drivers-related-to-a-transportation-system-operator-under-agreement/drivers-who-do-not-carry-on-other-commercial-activities)).
- 32 Wilson Prichard et al., *Innovations in Tax Compliance: Conceptual Framework*, World Bank Group Policy Research Working Paper no. 9032 (Washington, DC: World Bank Group, October 2019), at 20 (<https://openknowledge.worldbank.org/bitstream/handle/10986/32492/WPS9032.pdf>).

**TABLE 1 Rates of Net Sales Taxes To Be Remitted to Revenu Québec**

	GST	QST
	<i>percent</i>	
Rate of collectible tax . . . . .	5.00	9.975
Quick method of accounting remittance rate . . . . .	3.78	7.26
1% credit for taxable supplies (first \$30,000 of supplies for GST and first \$31,421 of supplies for QST) . . . . .	(1.05)	(1.10)
Rate of taxes collectible by Rasier Operations BV to be remitted to Revenu Québec on behalf of Uber drivers . . . . .	2.73	6.16

GST = goods and services tax; QST = Quebec sales tax.

Source: Revenu Québec, “Drivers Related to a Transportation System Operator Under Agreement Who Do Not Carry on Other Commercial Activities” ([www.revenuquebec.ca/en/businesses/consumption-taxes/gsthst-and-qst/special-cases-gsthst-and-qst/drivers-related-to-a-transportation-system-operator-under-agreement/drivers-who-do-not-carry-on-other-commercial-activities](http://www.revenuquebec.ca/en/businesses/consumption-taxes/gsthst-and-qst/special-cases-gsthst-and-qst/drivers-related-to-a-transportation-system-operator-under-agreement/drivers-who-do-not-carry-on-other-commercial-activities)).

## PROTECTION OF TAX REVENUES

In Quebec’s traditional remunerated passenger transportation sector, tax evasion consists of the following:

- Non-compliance with the mandatory registration of operators as agents for GST/HST and QST purposes, and failure to collect these taxes;
- Non-filing of income tax, withholding tax and tax returns;
- Transactions made in cash, without the sales being recorded;
- Non-issuance or non-retention of invoices, supporting documents and records.<sup>33</sup>

Prior to the pilot project rolled out in 2016, Quebec’s tax losses associated with the taxi industry were estimated at \$71.8 million, plus \$19.2 million in contributions to paragonovernmental organizations, such as the Régie des rentes du Québec (see table 2).<sup>34</sup>

33 Revenu Québec, *Analyse d’impact réglementaire : Facturation obligatoire dans le secteur du transport rémunéré de personnes* [Regulatory Impact Analysis: Mandatory Billing in the Remunerated Passenger Transportation Sector] (Quebec: Revenu Québec, 2017), at 4 (our translation).

34 Montreal taxis are required to offer their customers the option of paying their fare by credit or debit card as of October 2015. However, this did not have a major impact on the level of reported revenues of the traditional taxi industry estimated by RQ, which rose from \$384 million in 2014 to \$399 million in 2016. In fact, an assessment of the average gross revenues reported by taxi lease drivers and taxi driver-owners indicates that the level has remained stable between 2013 (when Uber still had a small presence in Quebec) and 2016. See Ministère des Finances du Québec, documents transmitted during an access-to-information request, June 10, 2019 (in French only) ([www.finances.gouv.qc.ca/documents/AccessInfo/fr/AINFR\\_2019-11202.pdf](http://www.finances.gouv.qc.ca/documents/AccessInfo/fr/AINFR_2019-11202.pdf)).

**TABLE 2 Estimated Annual Tax Losses Associated with the Taxi Industry in Quebec, 2011**

	Tax losses
	<i>\$ millions</i>
Income taxes .....	35.4
Québec sales tax .....	23.8
Health services fund, drug insurance, etc. ....	2.5
Credits and support programs .....	10.1
Subtotal—consolidated revenue fund .....	71.8
Contributions—paragovernmental organizations .....	<u>19.2</u>
Total .....	<u>91.0</u>

Source: Revenu Québec, *Analyse d'impact réglementaire : Facturation obligatoire dans le secteur du transport rémunéré de personnes* [Regulatory Impact Analysis: Mandatory Billing in the Remunerated Passenger Transportation Sector] (Quebec: Revenu Québec, 2017), at 13.

## PREVALENCE OF TAX EVASION IN THE TAXI INDUSTRY

While an amount of \$72 million in tax losses may seem immaterial in terms of Quebec's overall tax revenues, it is important to understand that the taxi industry generates estimated annual revenues ranging from \$500 million<sup>35</sup> to \$700 million.<sup>36</sup> As a result, although not all players in the taxi industry are necessarily involved in tax evasion schemes, the concentration of tax losses is high, indicating that some are working under the table.

In this environment, how has the MFQ-Uber agreement changed the taxi market and the associated tax revenues in Quebec?

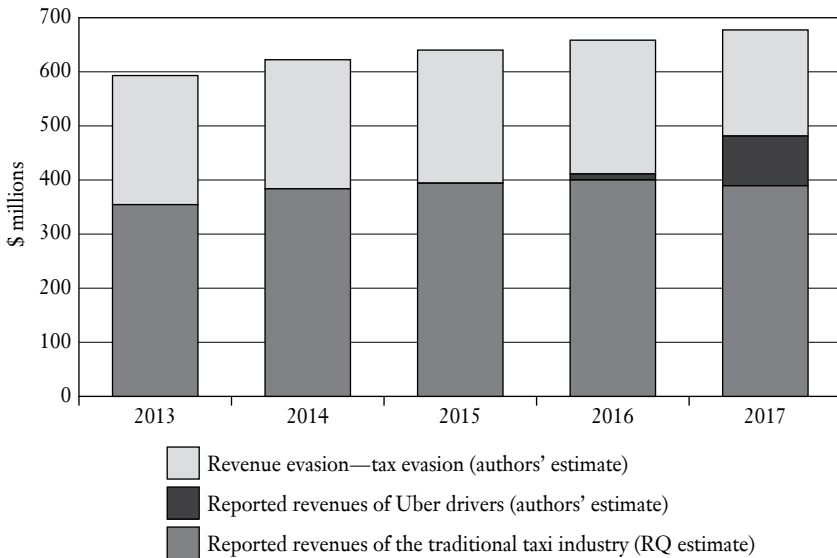
RQ estimates that reported taxable supplies from the conventional taxi industry (excluding Uber driver supplies) totalled \$389 million in 2017 (see figure 1).<sup>37</sup> However, these revenues constitute only a portion of the industry's total revenues.<sup>38</sup>

35 Comité provincial de concertation et de développement de l'industrie du taxi, *Un nouveau modèle pour le taxi au Québec — Mémoire présenté aux auditions publiques de la Commission des transports et de l'environnement portant sur le projet de loi no. 100* [A New Model for Taxis in Quebec—Brief Presented at the Public Hearings of the Commission des transports et de l'environnement on Bill no. 100] (Longueuil, QC: CPCDIT, May 2016), at 6.

36 *Analyse d'impact réglementaire*, supra note 33, at 7.

37 Document released further to an access-to-information request (in French only). See Revenu Québec, "Compilation des revenus bruts et des fournitures taxables de l'industrie du taxi 2013-2017 [Compilation of Gross Revenues and Taxable Supplies of the Taxi Industry, 2013-2017]," April 23, 2019 ([www.revenuquebec.ca/documents/fr/docs\\_adm/20-051980-001\\_DOC.pdf](http://www.revenuquebec.ca/documents/fr/docs_adm/20-051980-001_DOC.pdf)).

38 The revenue evasion estimate in the taxi industry is based on the 2011 QST loss to which the growth rate of consumer spending in the taxi and limousine sector was applied. In a response

**FIGURE 1 Estimated Tax Sector Revenues, Quebec, 2013-2017**

Source: Revenu Québec, “Compilation des revenus bruts et des fournitures taxables de l’industrie du taxi 2013-2017 [Compilation of gross revenues and taxable supplies of the taxi industry, 2013-2017],” April 23, 2019, and authors’ estimates.

From the time that Uber arrived in Quebec until the pilot project was rolled out in September 2016, Uber’s market share likely reduced the reported and unreported revenues of the conventional taxi industry. However, Uber and its drivers contributed to tax evasion in the taxi transportation sector as a result of their failure to collect sales taxes during this period.

While exact figures cannot be confirmed, the revenues reported by Quebec Uber drivers in 2017, the first full year in which Uber’s activities were covered by the pilot project, amounted to approximately \$100 million.<sup>39</sup> It is fair to assume

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dated June 6, 2019, RQ confirmed that its estimated tax loss for 2011 was still valid in 2018. See Revenu Québec, documents released further to an access-to-information request (in French only) ([www.revenuquebec.ca/documents/fr/docs\\_adm/19-046757\\_LD.pdf](http://www.revenuquebec.ca/documents/fr/docs_adm/19-046757_LD.pdf)).

39 The estimate of Uber drivers’ income as of September 2016 is based on the royalties collected under the MTQ-Uber agreement (Quebec, Ministère des Transports [[www.transports.gouv.qc.ca/fr/ministere/acces-information-renseignements-personnels/documents-reglement-diffusion/demande-acces/Documents/2019/04/DA-2018-2019-00505-tableau-redevances.pdf](http://www.transports.gouv.qc.ca/fr/ministere/acces-information-renseignements-personnels/documents-reglement-diffusion/demande-acces/Documents/2019/04/DA-2018-2019-00505-tableau-redevances.pdf)]) and trips valued at \$11.40 (including taxes), which was the average fare per trip in Montreal in 2016. See Jérôme Laviolette, “Planification stratégique d’un système de transport par taxi [Strategic Planning of a Taxi Transportation System]” (master’s thesis, Université de Montréal, École polytechnique de Montréal, 2017), at 143.

that reported revenues in the traditional taxi industry would have been higher had it not been for Uber's market share, but it can also be argued that the collection of sales taxes by Uber drivers has led to a reduction in the avoidance of tax on taxable supplies in the taxi industry.

The availability of more accurate data would allow us to conduct additional research and refine our findings on the effect of the MFQ-Uber agreement in reducing tax evasion. Nevertheless, the fact that income in the conventional taxi industry remained relatively stable from 2014 to 2017, both before and after the pilot project, suggests that the majority of Uber driver revenues curbed tax evasion in the industry.

## TAX REVENUES BEFORE AND AFTER THE MFQ-UBER AGREEMENT

Uber drivers' trips are covered by electronic payments, involving a computerized exchange of information regarding both the parties to the transaction and disclosure to RQ. The MFQ-Uber agreement can be considered to have helped to reduce tax evasion by improving industry compliance even before the sales registration system was rolled out in the industry.<sup>40</sup>

Accordingly, has the tax impact of Uber's arrival and its supervision by RQ been entirely positive? Not quite.

The impact of the tax loss related to the service fees that Uber charges its drivers should not be underestimated. The fees charged by Uber, which now amount to 25 percent of trip fares, generated gross revenue leakage of some \$20 million in Quebec in 2017 alone.<sup>41</sup>

Until recently, the profits generated by Uber on its intermediation activities between drivers and customers in Quebec were not subject to corporate income tax in Quebec.<sup>42</sup> Transferring these activities to Canada could be a game changer. Similarly, the work of the OECD aimed at creating a common solution that would mandate taxation of the profits of non-resident corporations where those profits are actually earned would make it possible to tax Uber's profits in Quebec. In the event that the work of the OECD on this initiative is not concluded by January 1, 2022, Canada intends to impose a temporary tax on the gross revenues from Canadian

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40 *Analyse d'impact réglementaire*, supra note 33, at 5. Initially planned for late 2019, a technology solution using the capabilities of the sales recording module is to be implemented in all vehicles used for paid passenger transportation (including vehicles used by Uber partner drivers) by November 2021. Every operator must provide the customer with an invoice (in electronic or paper format). The technology solution developed by RQ leverages the possibilities of the sales recording module used in restaurants and bars, and will send all invoices produced to RQ in real time.

41 Our estimate.

42 The multinational Uber, which generated revenues of \$14.2 billion in 2019, actually reported an operating loss of \$8.6 billion. See Uber, *2019 Annual Report* (San Francisco: Uber, 2020), at 55.

sources of certain multinationals (such as Uber) operating in the digital economy.<sup>43</sup> The details of this tax are still forthcoming, including a proposed allocation formula that would be used to transfer all or part of the resulting revenues to the provinces.

## INSPIRATION FOR OTHER SECTORS AND THE REST OF CANADA

Setting up a tax compliance agreement with a non-resident requires significant effort. Nonetheless, it is a tool to consider when there is a high incidence of tax evasion in a given sector and when the foreign intermediary would benefit from working with the tax authorities, if only to improve its corporate image. Furthermore, Quebec has already indicated that it may use targeted tax compliance agreements again.

Although the amounts of tax revenue involved are relatively limited, the actions taken by RQ in the Uber case seem to show a concern for fairness among taxpayers from a tax liability standpoint. RQ made sure that Uber's integration into the Quebec taxi industry, which many did not support, was carried out in compliance with tax obligations, even if it meant having to innovate to reach this goal.

Uber drivers in Quebec have the applicable sales taxes on their trips collected and remitted to RQ on their behalf as instalment payments (and have information disclosed on their activities). In other Canadian provinces also, Uber collects sales taxes on behalf of drivers; however, the amounts are paid weekly to the drivers, who must set them aside and remit them to the Canada Revenue Agency (CRA).<sup>44</sup>

Overall, the response to Uber in the rest of Canada is comparable to that in the majority of OECD countries, which do not use sales tax instalment payments and do not have the same level of detail on Uber drivers' transactions as exists in Quebec, enabling the verification of sales tax and income tax compliance.<sup>45</sup> Insofar as the mechanics of the MFQ-Uber agreement could simplify and improve tax compliance for drivers in the rest of Canada, it may be appropriate for the CRA to consider the Quebec model. In such a case, a high degree of consistency between the provinces and the federal government would provide a better negotiating position in relation to Uber, somewhat like the coordination of the Ministère des Transports and the MFQ in Quebec.

The CRA considers that the new business models supported by digital technologies, while creating new compliance risks, have the potential to facilitate the

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43 *Fall Economic Statement 2020*, supra note 4, at 131.

44 Uber, "How To File Taxes as an Uber Partner," 2019, at 9 (<https://d1neyzh1ys8wfo.cloudfront.net/static/PDFs/AB%2CON%2CSK+handbook.pdf>).

45 See Organisation for Economic Co-operation and Development, *The Sharing and Gig Economy: Effective Taxation of Platform Sellers: Forum on Tax Administration* (Paris: OECD, March 2019) (<https://doi.org/10.1787/574b61f8-en>), chapter 2.

reporting and payment of taxes.<sup>46</sup> In the specific case of the sharing economy, platforms centralize transactions, the processing of which is facilitated by information technology. However, this centralization raises questions about the application of the small supplier rule.<sup>47</sup>

First, the platforms have information about the providers of goods or services that, owing solely to the transactions that they intermediate, does not allow those providers to qualify as small suppliers. Organizing the sharing of this information with the CRA appears to be a priority for compliance purposes.

Second, the small supplier rule is intended to minimize the administrative burden on very small businesses and enhance administrative efficiency in collecting, remitting, receiving, and recovering small amounts after deducting taxes paid on inputs. However, in the decades since the drafting of this rule, the business environment has evolved.

In Quebec and elsewhere in Canada, the expansion of the sharing economy could have a more acute adverse effect on tax bases in the future, particularly with respect to commodity taxes. The proliferation of small suppliers is a real issue that challenges traditional methods of collecting tax revenues.

Widespread use of tax agreements in the sharing economy to subject all transactions to sales taxes is probably not appropriate.<sup>48</sup> However, a revision of the tax framework appears to be unavoidable so that sharing economy platforms can be involved in the collection of sales taxes when necessary. While this reform will require a highly proactive approach by tax administrations, Quebec's experience with the MFQ-Uber agreement shows that it is feasible.

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46 See Canada Revenue Agency, "Underground Economy Strategy 2018-2021" ([www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/corporate-reports-information/underground-economy-strategy-2018-2021.html](http://www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/corporate-reports-information/underground-economy-strategy-2018-2021.html)).

47 Section 148 of the ETA.

48 In 2018, 210 local and foreign sharing economy initiatives across 16 sectors were identified in Quebec. See Quebec, Groupe de travail sur l'économie collaborative, *Moderniser et renforcer les politiques publiques et réussir face aux transformations associées à l'économie collaborative* [Modernizing and Strengthening Public Policy and Succeeding Amid Transformations Related to the Sharing Economy] (Quebec: Groupe de travail sur l'économie collaborative, June 2018), at 10.

